UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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April 15, 2022

Ref: 8WD-CWQ

Sent Via Email
Digital Read Receipt Requested

Melvin J. Baker, Chairman
Southern Ute Indian Tribal Council
P.O. Box 737
Ignacio, Colorado 81137

Re: EPA Approval of Southern Ute Indian Tribe Water Quality Standards

Dear Chairman Baker:

The U.S. Environmental Protection Agency Region 8 (EPA or Region) has completed its review of the Southern Ute Indian Tribe (Tribe) water quality standards (WQS).[1] The WQS were adopted by the Southern Ute Indian Tribal Council (Council) on February 8, 2022. The WQS were submitted to the EPA for review with your letter dated February 15, 2022. The WQS submittal package included: (1) *Water Quality Standards for Surface Waters on the Southern Ute Indian Reservation*, February 8, 2022, (2) the Council's Resolution No. 2022-027 adopting the WQS under Tribal law, (3) a statement from the Tribal Attorneys certifying that the WQS were duly adopted pursuant to Tribal law, (4) a Proof of Publication folder documenting the Tribe's public outreach, comment solicitation and hearing records for the WQS, and (5) Responses to Comments. Receipt of the Tribe's WQS materials on February 15, 2022, initiated the EPA's review pursuant to Section 303(c) of the Clean Water Act (CWA) and the implementing federal regulation at 40 C.F.R. Part 131. The EPA has completed its review and this letter is to notify you of our action.

[1] CWA § 518(e) specifically authorizes the EPA to treat Indian tribes as States (Treatment as a State / Treatment in a Similar Manner as a State, or TAS) for purposes of CWA § 303. See also 40 C.F.R. § 131.8. The Tribe's application to administer the CWA § 303(c) WQS and § 401 Water Quality Certification programs was approved by EPA on March 28, 2018 (except in regards to trust lands acquired by the Tribe after EPA's 2018 approval). *See* U.S. Environmental Protection Agency Region 8 Decision Document: Approval of the Southern Ute Indian Tribe's Application for Treatment in a Similar Manner as a State for the Clean Water Act Sections 303(c) Water Quality Standards and 401 Certification Programs, March 28, 2018. EPA's 2018 approval action authorized the Tribe's implementation of §§ 303(c) and 401 programs for all surface waters on lands held in trust for the Tribe within the Southern Ute Indian Reservation boundaries as identified in its application and at the time of the application submittal, as well as the trust land parcel contiguous to the Reservation identified in the Tribe's application. *Id.* Today's action represents EPA's first evaluation of the Tribe's WQS pursuant to CWA § 303(c) and applies to all surface waters on trust lands for which the EPA's 2018 approval action authorized CWA § 303(c) TAS.

DEVELOPMENT OF THE SOUTHERN UTE INDIAN TRIBE WATER QUALITY STANDARDS

The Tribe's Environmental Programs Division (Division) updated the previous WQS through several revisions, and then shared *Proposed Water Quality Standards for Surface Waters on the Southern Ute Indian Reservation*, 2019 and conducted a three-phase WQS outreach plan from May 2020 – October 2021. (See Enclosure for detailed discussion.) In the final outreach phase the Tribe held a WQS public comment period from August 23, 2021 through October 22, 2021, and held a WQS hearing on October 7, 2021. The Tribe revised its WQS in response to comments received and adopted the revised WQS on February 8, 2022.

The adopted WQS contain multiple components, including:

- use classifications identifying the uses that may be assigned to waters;
- designated uses assigned to surface waters;
- narrative and numeric water quality criteria for the protection of designated uses;
- wetlands and biological criteria;
- antidegradation policy and implementation procedures; and
- general policies (e.g., triennial review, definitions, critical conditions, mixing zones, and compliance schedule authorizing provision) explaining how the WQS are interpreted, implemented and maintained.

CLEAN WATER ACT REVIEW REQUIREMENTS

CWA § 303(c)(2) requires States and authorized Indian Tribes to submit new or revised WQS to the EPA for review. The EPA is to review and approve or disapprove the submitted standards. Under CWA § 303(c), and as explained in 40 C.F.R. §§ 131.5(a) and 131.6, the EPA is to review the Tribe's WQS submittal to determine whether it contains:

- designated uses consistent with the requirements of CWA § 101(a)(2) and 40 C.F.R. § 131.10;[2]
- water quality criteria protective of designated uses that are based on sound scientific rationale and consistent with 40 C.F.R. § 131.11;
- antidegradation policy and implementation methods consistent with 40 C.F.R. § 131.12;
- general policies (e.g., mixing zones) consistent with 40 C.F.R. § 131.13;
- compliance schedule authorizing provision consistent with 40 C.F.R. § 131.15;
- certification by the Tribal Attorney that the WQS were duly adopted pursuant to Tribal law;
- methods used and analyses conducted supporting the adopted WQS; and
- general information documenting the scientific bases for adopted uses and general policies.

CWA § 303(c)(2) requires States and authorized Indian Tribes to submit new or revised WQS to EPA for review. EPA is required to review and approve or disapprove the new or revised WQS. Pursuant to CWA § 303(c)(3), if EPA determines that any standard is not consistent with the applicable requirements of the CWA, the Agency shall, not later than the ninetieth day after the date of submission, notify the State or authorized Tribe and specify the changes to meet the requirements. If the changes are not adopted within ninety days after the date of notification, EPA is to propose and promulgate such WQS pursuant to CWA § 303(c)(4). The Region's goal has been, and will continue to be, to work closely with States and authorized Tribes throughout the standards revision and adoption processes so that submitted new and revised WQS can be approved by EPA. Consistent with the federal regulation at 40 C.F.R. § 131.21, new or revised WQS do not become applicable WQS for CWA purposes until they are approved by EPA.

[2] Or other uses supported by appropriate technical and scientific data and analyses in a Use Attainability Analysis. See the discussion in Enclosure and 40 C.F.R. § 131.10(j).

ENDANGERED SPECIES ACT REQUIREMENTS

EPA initiated consultation with the U.S. Fish and Wildlife Service (FWS) under Section 7(a)(2) of the Endangered Species Act (ESA) on March 8, 2022 by conversation with Laura Archuleta, Environmental Contaminants Specialist, FWS, regarding our potential action on the Tribe's WQS. EPA's action on the Tribe's WQS, pending completion of ESA consultation under Section 7(a)(2), is fully consistent with Section 7(d) of the ESA because it does not foreclose either the formulation by the FWS or the implementation by EPA of any alternatives that might be determined in the consultation to be needed to comply with ESA Section 7(a)(2). Proceeding with a CWA Section 303(c) action prior to the completion of Section 7 consultation provides a more protective condition (e.g., new WQS for all Southern Ute Tribal waters) for listed species and/or designated critical habitat during the interim period while EPA is completing the Section 7 consultation requirements on the WQS. Under CWA Section 303(c)(4)(B), EPA has authority to take additional action regarding the Tribe's WQS if the consultation with the FWS identifies deficiencies in the Tribe's WQS requiring remedial action by EPA.

TODAY'S ACTION

I am pleased to inform you that EPA is approving all new WQS adopted by the Council on February 8, 2022, except those provisions upon which EPA is taking no action today. The EPA actions are summarized in Table 1 and discussed in the Enclosure.

Table 1. EPA Actions on *Water Quality Standards for Surface Waters on the Southern Ute Indian Reservation*.

Rule Section	Adoption	EPA Action
1 Purpose, Authority and Applicability	General policies in 1.1 Purpose; 1.2 Authority; 1.3 Severability; 1.4 Applicability; 1.5 CWA Program Cooperation; 1.6 Inquiries, Correspondence and Notifications; and 1.7 Definitions.	Approved, except no action on 1.3 Severability
2 Implementation of Standards	General policies for authorization of Schedules of Compliance; CWA § 401 and § 402 implementation, and CWA § 303(d) total maximum daily loads; 2.1 Critical Conditions; and 2.2 Water Rights.	Approved, except no action on CWA §§ 401, 402 and 303(d) provisions, and 2.2 Water Rights
3 Triennial Review	General policies authorizing and conducting triennial reviews of Tribal WQS.	Approved
4 Mixing Zones and Dilution Policy	General policies in 4.1 Purpose - authorizing dilution allowances and mixing; and 4.2 Implementation considerations and restrictions.	Approved

5 Designated Uses	General policies for designating uses; 5.1 Designated Use Codes: 5.2 Use Definitions; 5.3 Stream (or waterbody) Segmentation; 5.4 Assigning Designated Uses – policies and limitations; 5.5 Use Attainability Analyses – requirements and process; 5.6 Changing Use Designations – policies and process; 5.7 Surface Water Use Designations for Tribal Waters – designating uses for all individual Tribal stream segments and waterbodies; 5.8 Intermittent Waters – general policies applying downstream uses to all intermittent waters when connecting surface water is present; and 5.9 Tribal Waters Subject to Use Attainability Analyses.	Approved
6 Narrative Water Quality Criteria	General policies and goals for narrative criteria; 6.1 Criteria – adopted narrative criteria; and 6.2 Implementation – narratives implementing procedures.	Approved
7 Narrative Biological Criteria	General policies and goals for narrative biological criteria; 7.1 Criteria – adopted narrative biological criteria; and 7.2 Implementation – biological narratives implementing procedures.	Approved
Section 8 Numeric Criteria	General policies and numeric criteria for: 8.1 Establishing Numeric Criteria – including aquatic life, human health and site-specific criteria policies; 8.2 Potable and Industrial Water Supply; 8.3 Primary Contact Recreation; 8.4 Secondary Contact Recreation; 8.5 Aquatic Life; 8.6 Hardness-Dependent Criteria for Metals; 8.7 Ammonia Criteria; and 8.8 Selenium Criteria.	Approved
9 Numeric Criteria Tables	General policies, numeric criteria and applicable footnotes for 9.1 Aquatic Life; and 9.2 Human Health.	Approved, except no action on 9.1 mercury CCC
10 WQS for Wetlands	General policies, goals and narrative criteria protecting wetlands.	Approved
11 Outstanding Tribal Resource Waters	General policies, goals, processes for adoption, and protection of Outstanding Tribal Resource Waters under Tribal Antidegradation Policies and Antidegradation Implementation Procedures.	Approved
12 Analytical Methods	General policy for analytical methods used for surface water measurements in implementing Tribal WQS	No action
13 Antidegradation Review Policies and Procedures	13.1 Antidegradation Policy – protecting Tier 1 [existing use], Tier 2 [high quality waters] and Tier 3 [outstanding tribal resource waters]; and 13.2 Antidegradation Implementation Procedures – including Appendix A Procedures and Appendix B Review Worksheet.	Approved
14 Variances from WQS	General policies, goals, objectives and procedures guiding adoption of variances; 14.1 Application; and 14.2 Requirements for a Variance.	Approved

CONCLUSION

These new WQS will help to restore, maintain, and protect the quality of the Southern Ute Indian Reservation surface waters in accordance with the goals of the CWA. The EPA has concluded that the *Water Quality Standards for Surface Waters on the Southern Ute Indian Reservation*, February 8, 2022 are consistent with the requirements of the CWA and the EPA's implementing Water Quality Standards Regulation at 40 C.F.R. Part 131. Accordingly, the Tribe's WQS are approved except for those identified provisions upon which EPA is taking no action today.

We thank the Southern Ute Indian Tribe, Tribal Council and Environmental Programs Division for their efforts to develop, revise and adopt the Tribe's WQS. The EPA recognizes the significant work and dedication put forth in formulating these WQS, and the environmental protection the standards are designed to provide. The EPA looks forward to working with the Tribe to further develop and maintain its WQS. If you have questions concerning this letter, the most knowledgeable person on my staff is George Parrish, who may be reached at 303-312-7027.

Sincerely,

JUDY BLOOM

Digitally signed by JUDY BLOOM
Date: 2022.04.15 10:22:22 -06'00'

Judy Bloom, Manager
Clean Water Branch

Enclosure

cc: Mark Hutson, Division Head, Environmental Programs Division, Southern Ute Indian Tribe
Alexandra Ratcliff, Environmental Programs Manager, Southern Ute Indian Tribe
Jeff Seebach, General Assistance Program Manager, Southern Ute Indian Tribe
Julianne Begay and Sam W. Maynes, Tribal Attorneys, Southern Ute Indian Tribe
Laura Archuleta, Environmental Contaminants Specialist, U.S. FWS Colorado Field Office

ENCLOSURE
RATIONALE FOR EPA'S ACTION ON THE SOUTHERN UTE INDIAN TRIBE WQS

Introduction

This enclosure provides the rationale for today's action by the U.S. Environmental Protection Agency Region 8 (EPA) pursuant to Clean Water Act (CWA) § 303(c) and 40 C.F.R. Part 131 on the Southern Ute Indian Tribe (Tribe) water quality standards (WQS).[3] The Southern Ute Indian Tribal Council (Council) adopted the WQS on February 8, 2022, and the Tribe submitted the WQS and supporting materials to EPA for review, which were received on February 15, 2022. The discussion below reviews the Tribe's WQS development and public participation; then addresses each approved section in order of occurrence in *Water Quality Standards for Surface Waters on the Southern Ute Indian Reservation*, February 8, 2022; and then discusses provisions and sections of the Tribe's WQS where EPA is taking no CWA § 303(c) action today.

DEVELOPMENT AND PUBLIC OUTREACH FOR THE TRIBE'S WATER QUALITY STANDARDS

The Tribe's Environmental Programs Division (Division) conducted a three-phase WQS public outreach and participation plan from May 2020 – October 2021.[4] In phase one from May – October 2020 the Division contacted tribal members and distributed the *Proposed Water Quality Standards for Surface Waters on the Southern Ute Indian Reservation*, 2019, published notices soliciting tribal member comments, and held a WQS hearing for tribal members on October 15, 2020. In phase two the Tribe sought review and comments on its WQS from the State of Colorado (from November 2020 – January 2021). The Tribe revised the WQS in response to comments received during phases one and two. In phase three from August 23 – October 22, 2021, the Division provided an opportunity for comment to the general public and distributed *Proposed Water Quality Standards for Surface Waters on the Southern Ute Indian Reservation*, published notices soliciting public comments, and held a public WQS hearing on October 7, 2021. The Tribe's WQS were further revised in response to comments received during phase three, and the revised WQS were adopted under Tribal law by the Council on February 8, 2022.

Accordingly, the EPA has determined the Tribe made WQS outreach efforts to the public and neighboring jurisdictions, held multiple public comment periods and hearings, and revised its WQS in response to comments received in a manner consistent with the public participation requirements at 40 C.F.R. Part 25 and § 131.20.

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[3] CWA § 518(e) specifically authorizes the EPA to treat Indian tribes as States (Treatment as a State / Treatment in a Similar Manner as a State, or TAS) for purposes of CWA § 303. See also 40 C.F.R. § 131.8. The Tribe's application to administer the CWA § 303(c) WQS and § 401 Water Quality Certification programs was approved by EPA on March 28, 2018 (except in regards to trust lands acquired by the Tribe after EPA's 2018 approval). *See* U.S. Environmental Protection Agency Region 8 Decision Document: Approval of the Southern Ute Indian Tribe's Application for Treatment in a Similar Manner as a State for the Clean Water Act Sections 303(c) Water Quality Standards and 401 Certification Programs, March 28, 2018. EPA's 2018 approval action authorized the Tribe's implementation of §§ 303(c) and 401 programs for all surface waters on lands held in trust for the Tribe within the Southern Ute Indian Reservation boundaries as identified in its application and at the time of the application submittal, as well as the trust land parcel contiguous to the Reservation identified in the Tribe's application. *Id.* Today's action represents EPA's first evaluation of the Tribe's WQS pursuant to CWA § 303(c) and applies to all surface waters on trust lands for which the EPA's 2018 approval action authorized CWA § 303(c) TAS.

[4] See Southern Ute Indian Tribe WQS submittal package, Proof of Publication folder, documenting the Tribe's 2020-2021 WQS public outreach, comment solicitation and hearing records, and Response to Comments documents.

Section 1 Purpose, Authority and Applicability

Section 1 establishes foundational general policies for understanding and implementing the Tribal WQS and each subsection is discussed below.

1.1 Purpose – This subsection establishes that the Tribe's WQS are adopted to protect public health and welfare, enhance the quality of water and serve the purposes of the CWA. The Tribe's WQS serve the primary functions of setting the water quality goals for Tribal surface waters and providing the legal basis for regulatory water pollution controls. This includes the Tribe's stated intent that its WQS provide for the protection and propagation of fish, shellfish and wildlife and recreation in and on the water; and consider the use and value of fish, shellfish and wildlife, recreation, public water supply, agriculture, navigation and other uses.

1.2 Authority – This subsection documents that the Southern Ute Tribal Council adopts these WQS pursuant to its inherent authority and authority under the Tribal Constitution. The Tribe also adopts its WQS pursuant to the Congressional authorities under CWA § 518, and the EPA's March 28, 2018 approval of the Tribe's application to administer the CWA §§ 303(c) and 401 programs.

1.4 Applicability – This subsection establishes that the Tribe's WQS apply to all Reservation waters over which the Tribe has authority to establish WQS. (See discussion in footnote 3 on applicability of today's EPA action.) These waters are defined as "tribal waters" in this subsection.

1.5 Clean Water Act Program Implementation in Cooperation with EPA – This subsection provides the Tribe's intention that EPA will continue to exercise its authorities under CWA § 402 National Pollutant Discharge Elimination System (NPDES) issuing permits for discharges to Southern Ute Indian Reservation surface waters. Further, it provides that such permitting shall be conducted in cooperation with the Tribe, and all permits for discharges to Tribal waters shall be consistent with the requirements of these WQS. This subsection also establishes that all applicants for federal permits or licenses potentially affecting Tribal waters must obtain a Tribal water quality certification pursuant to its CWA § 401 Certification Procedures.

1.6 Inquiries, Correspondence and Notifications to the Tribe – This subsection provides the contact information for all inquiries, correspondence and notifications regarding the Tribe's WQS.

1.7 Definitions – This subsection provides definitions for terms with specific meanings that are used throughout the document. WQS use numerous technical terms that need to be well defined to ensure clear understanding and correct implementation of procedures and requirements. EPA finds that the definitions adopted by the Tribe are consistent with EPA guidance and provide technical clarity to the interpretation and implementation of the WQS.

The EPA reviews WQS general policies to ensure they are compatible with state or tribal WQS provisions, technically well founded and consistent with the CWA and 40 C.F.R. Part 131 requirements. The EPA has determined that subsection 1.3 Severability is not a WQS and is taking no action today on this provision. (See discussion below.) EPA has determined that the above general policies contained in Section 1. Purpose, Authority and Applicability are consistent with the CWA and the federal requirements at 40 C.F.R. Part 131.13.

Accordingly, the Section 1 Purpose, Authority and Applicability provisions, except for 1.3 Severability, of the Tribe's WQS are approved.

Section 2 Implementation of Standards

Section 2 includes general policies authorizing schedules of compliance and establishing critical (or low flow) conditions for determining water-quality-based control requirements in NPDES permits. This section establishes the Tribe's authority to allow schedules of compliance to meet NPDES permit requirements for new or revised WQS or for new interpretations of existing WQS, on a case-by-case basis. The Tribe requires that all determinations to allow schedules of compliance will follow EPA guidance.

2.1 Critical Conditions – This subsection establishes critical conditions (maximum dilutions that may be afforded under low flow conditions) based on flows measured immediately upstream of a discharge point, for determining water-quality-based regulatory controls. (E.g., Water Quality-Based Effluent Limits, or WQBELs, in NPDES permits.) The Tribe designated critical low flows consistent with the duration and frequency provisions of its numeric water quality criteria. This approach protects designated uses by ensuring that the predicted frequency of criteria exceedances (i.e., resulting from point source discharges compliant with WQBELs) is consistent with the Tribal water quality criteria. The Tribe authorizes the use of seasonal critical conditions based on seasonal variability in the receiving water flow or pollution source. The Tribe adopted these critical flow conditions:

Stream Flows	
Chronic Aquatic Life	4-day, 3-year flow (biologically based)
Acute Aquatic Life	1-day, 3-year flow (biologically based)
Human Health (carcinogens)	harmonic mean flow
Human Health (non- carcinogens)	4-day, 3-year flow (biologically based), or 1-day, 3-year flow (biologically based)
Effluent Flows	
Chronic Aquatic Life	Mean daily flow
Acute Aquatic Life	Maximum daily flow
Human Health (all)	Mean daily flow

The EPA has determined that the general policies in Section 2 Implementation of Standards authorizing the use of schedules of compliance, and subsection 2.1 Critical Conditions are consistent with EPA guidance.[5] The EPA has determined that the Tribe's provisions authorizing the use of schedules of compliance, and Section 2.1 Critical Conditions are consistent with the CWA and the federal requirements at 40 C.F.R. §§ 131.13 and 131.15. Accordingly, the Section 2 Implementation of Standards provisions authorizing the use of schedules of compliance, and subsection 2.1 Critical Conditions are approved.

[5] See: Water Quality Standards Handbook, U.S. EPA, EPA-820-B-14-004, 2014. Chapter 5 General Policies, pp. 1-14.

Section 3 Triennial Review

Section 3 establishes policies for review of the Tribe's WQS in accordance with the requirements under tribal administrative procedures and 40 C.F.R. Part 25 and § 131.20. This section establishes a process to hold a hearing to review and revise the Tribe's WQS at least once every three years, where the Tribe will propose any revisions to its WQS and make any revisions available to the public (along with supporting information and analyses). This triennial review process will be ongoing, allowing the WQS to change over time and remain protective of tribal waters.

EPA has reviewed the Tribe's WQS review policies in Section 3 Triennial Review and determined they are consistent with the CWA and the requirements at 40 C.F.R. Part 25 and § 131.20. Accordingly, the Section 3 Triennial Review provisions are approved.

Section 4 Mixing Zones and Dilution Policy

Section 4 establishes the Tribe's policies for allowing mixing zones and dilution of effluent discharges in tribal waters. A mixing zone is an area surrounding or downstream of a discharge where an effluent plume is progressively diluted by its receiving water, and certain numerical criteria otherwise applicable to the waterbody may be exceeded. Dilution and mixing zone policies explain the situations in which a mixing zone or allowance for dilution may be provided by permitting authorities for purposes of deriving effluent limits.

4.1 Purpose - The policy in this subsection establishes how mixing and dilution of point source discharges with receiving waters are addressed in developing pollutant-specific and whole-effluent toxicity (or WET test) discharge limitations. Depending on site-specific conditions, the Tribe may (not) allow dilution and mixing.

4.2 Implementation - This subsection establishes policies and specific requirements and procedures for addressing mixing zone and dilution issues that closely follow EPA guidance. The policy minimizes the size, impacts and risks of mixing zones and dilution allowances for discharges to tribal waters. A mixing zone analysis, field study or modeling is required to ensure compliance with the Tribe's mixing zone requirements (such as size and in-zone quality). This subsection also incorporates the critical conditions policy (see subsection 2.1 Critical Conditions above) describing critical low flows to be used. Where sufficient mixing or dilution is not available at critical low flows this subsection requires discharge limitations are to be based on meeting the Tribe's WQS at the end-of-pipe (i.e., compliance with Tribal WQS at the point where the effluent meets the receiving water).

The EPA has reviewed the Tribe's policies and requirements in Section 4 Mixing Zones and Dilution Policy and finds the Tribe followed EPA guidance and the EPA's Water Quality Standards Handbook.[6] The EPA finds the Section 4 Mixing Zones and Dilution Policy procedures, requirements, and policies to be consistent with EPA guidance and 40 C.F.R. § 131.13. Accordingly, the Section 4 Mixing Zones and Dilution Policy provisions are approved subject to ESA consultation.

[6] See: Technical Support Document for Water Quality-Based Toxics Control, U.S. EPA. 1991; and Water Quality Standards Handbook, U.S. EPA, EPA-820-B-14-004, 2014. Chapter 5 General Policies, pp. 1-14.

Section 5 Designated Uses

Section 5 Designated Uses establishes the Tribe's system of use classifications that may be applied to Tribal waters[7]; processes for segmentation of water bodies, assigning and changing designated uses, and developing Use Attainability Analyses; and the uses designated to Tribal waters. A water quality standard defines the water quality goals of a waterbody or portion thereof, in part, by designating the use or uses to be made of the water. 40 C.F.R. § 131.3(f) defines 'designated uses' as those uses specified in WQS for each water body or segment whether or not they are being attained. (See also requirements for uses in § 131.6 and 131.10.) This section establishes requirements that when designating uses for Tribal waters the Tribe must take into consideration their use and value for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. Further the Tribe establishes requirements for the protection and maintenance of downstream uses. The adopted provisions within each subsection and the uses designated for Tribal waters are discussed below.

5.1 Designated Use Codes – This subsection adopts the following codes for designated uses:

Section 5.1, Table 1. Designated Use Codes.

CODE	USE
COLD1	High Quality Cold Water Aquatic Life (Class 1)
COLD2	Low Quality Cold Water Aquatic Life (Class 2)
COOL1	High Quality Cool Water Aquatic Life (Class 1)
COOL2	Low Quality Cool Water Aquatic Life (Class 2)
WARM1	High Quality Warm Water Aquatic Life (Class 1)
WARM2	Low Quality Warm Water Aquatic Life (Class 2)
REC1	Primary Contact Recreation (Class 1)
REC2	Secondary Contact Recreation (Class 2)
PWS	Potable Water Supply
IND	Industrial Water Supply
AGR	Agricultural Water Supply

5.2 Designated Uses Definitions – This subsection provides the following definitions for the Tribes uses:

> Potable Water Supply - Waters suitable or intended to become suitable, after appropriate pretreatment, for human consumption.
>
> Primary Contact Recreation (Class 1) – Waters suitable for recreational activities where full body immersion and/or the ingestion of small quantities of water is likely to occur. Such activities include but are not limited to swimming, rafting, kayaking, tubing, windsurfing, water-skiing, and water play by children.
>
> Secondary Contact Recreation (Class 2) – Water suitable for recreational activities where a person's water contact is likely to be limited (e.g., wading or fishing) such that exposure of the eyes, ears, respiratory, or digestive systems or urogenital areas would normally be avoided.

[7] CWA Section 303(c) provides EPA the authority to review and approve or disapprove WQS adopted by states and authorized tribes. EPA's CWA Section 303(c) authority is limited to reviewing and acting on WQS for "waters of the U.S." Tribal waters may or may not be "waters of the U.S." EPA recognizes and supports the Tribe's interest in protecting waters not considered "waters of the U.S."

> Aquatic Life (Class 1) – High quality waters that support or are intended to become supportive of a typical diversity and abundance of cold, cool, or warm water aquatic biota that are generally able to function at intermediate or transitional zones between temperatures representative of a stream segment, including the expected diverse aquatic community, functions, and sensitive species.
>
> Aquatic Life (Class 2) – Low quality waters that are not capable of sustaining a typical diversity or abundance of cold, cool, or warm water aquatic biota, respectively, due to physical habitat, water flows or levels, or uncorrectable water quality conditions that result in substantially limited abundance or diversity of species.
>
> Industrial Water Supply - Waters that are suitable for industrial processes and cooling water.
>
> Agricultural Water Supply - Waters suitable or intended to become suitable for irrigating crops and for use as drinking water for livestock.

This use classification scheme is implemented when the Tribe designates individual uses to waterbody segments for Tribal waters. The Tribe designates a water temperature class (cold, cool or warm) to the Class 1 and Class 2 aquatic life uses which provides six different aquatic life uses that may be designated for Tribal waters.

5.3 Stream Segmentation Criteria – This subsection documents the process and considerations used in dividing Tribal waters into individual waterbody segments. E.g., the mainstem Animas River is split into Animas River Segments 1, 2 and 3, north to south through the Reservation. Tribal waters are generally divided on a river basin and sub-basin approach, with many segments including streams and wetlands that are tributary to that mainstem segment. The Tribe considered water quality, aquatic habitat and physical characteristics data as well as existing uses in making segmentation decisions.

> "Segments were delineated to create consistency in the designation of uses by determining segment boundaries according to where physical or water quality characteristics of a watercourse change significantly enough to require a change in use classifications or water quality criteria."

5.4 Assigning Designated Uses – This subsection establishes policies, requirements, and limitations for assigning and revising designated uses for Tribal waters. The Tribe's use designation policies, requirements and limitations cite and are consistent with CWA §§ 101(a)(2) and 303(c), and 40 C.F.R. 131.10. E.g., the Tribe will designate all tribal waters for full aquatic life and recreation uses, unless demonstrated not to be attainable. The Tribe's use designation policies establish an approximate 20-year minimum planning timeframe for determining attainability of uses (e.g., in conducting Use Attainability Analyses). Also, the use designation policies include considering downstream use protection when designating upstream uses and protective criteria for Tribal waters.

5.5 Use Attainability Analyses – This subsection establishes the Tribe's requirements and process for development of Use Attainability Analyses (UAAs). The CWA §§ 101(a)(2) and 303(c), and 40 C.F.R. Part 131 effectively establish a rebuttable presumption that the CWA §101(a)(2) uses, aquatic life and primary contact recreation, are attainable and should apply to all waters. This presumption can be rebutted, but only where it is affirmatively demonstrated that such uses are not attainable. States and Tribes are required to conduct a UAA whenever: 1) designating uses that do not include those specified in CWA § 101(a)(2), or 2) removing a use specified in CWA § 101(a)(2) or adopting subcategories of those uses that require less stringent criteria. (40 C.F.R. § 131.10(j)). 131.10(g), further identifies the six specific use removal factors that may be considered in

demonstrating that attaining a use is not feasible. A UAA is required where the Tribe is not designating a CWA § 101(a)(2) use (e.g., no recreation use designated) or designating a subcategory of a CWA § 101(a)(2) use with less stringent criteria. This subsection requires that all UAAs developed for Tribal waters are consistent with the CWA and 40 C.F.R. Part 131.

5.6 Changing Use Designations – This subsection establishes the Tribe's processes for adding a new designated use or changing (removing or downgrading) a currently designated use to Tribal waters. The Tribe or a petitioning party may request such use changes through a WQS rulemaking that includes a public hearing. The Tribe establishes a goal to retain all designated uses that are currently attained. The Tribe intends to add any uses that are currently attained in, but are not currently designated to, a waterbody. If scientifically demonstrated that a currently designated use (that is not an existing use) is not attainable in accordance with a 40 C.F.R. § 131.10(g) factor then the designated use may be removed or downgraded (e.g., changed from WARM1 to WARM2). Removing or downgrading an aquatic life or recreation use requires a UAA (see subsection 5.5), and coordination with the Tribe if requested by petition. Any use changes with less stringent criteria, or where aquatic life or recreation uses are downgraded or removed, are to be reviewed during subsequent Tribal WQS triennial reviews.

5.7 Surface Water Use Designations for Tribal Waters – This subsection adopts the following waterbody segments and designated uses for Tribal waters.

Table 1. Designated Uses for the Pine River, Hydrologically Connected Wetlands and Associated Perennial Tributaries.

Segment and Description	Designated Uses	Segment Boundaries	
Pine River Segment1 (Reservation boundary to Pine Ditch Diversion and all perennial streams, small ponds and wetlands tributary to this segment)	COOL1 REC1 PWS AGR	Northern Boundary River Mile 19.5 N 37.214814 W -107.595264	Pine Ditch Diversion River Mile 17.5 N 37.190642 W -107.587775
Pine River Segment2 (Pine Ditch Diversion to confluence with Dry Creek and all perennial streams, small ponds and wetlands tributary to this segment, excluding Dry Creek)	COOL1 REC1 PWS AGR	Pine Ditch Diversion River Mile 17.5 N 37.190642 W -107.587775	Dry Creek Confluence River Mile 12 N 37.139717 W -107.620411
Pine River Segment3 (Dry Creek to New Mexico state line, including Dry Creek, and all perennial streams, small ponds and wetlands tributary to this segment)	WARM1 REC1 PWS AGR	Dry Creek Confluence River Mile 12 N 37.139717 W -107.620411	Southern Boundary River Mile 0 N 36.999978 W -107.601111

Table 2. Designated Uses for the Animas River, Hydrologically Connected Wetlands and Associated Perennial Tributaries.

Segment and Description	Designated Uses	Segment Boundaries	
Animas River Segment1 (Reservation boundary to Basin Creek and all perennial streams, small ponds and wetlands tributary to this segment, excluding Basin Creek)	COOL1 REC1 PWS AGR	Northern Boundary River Mile 19 N 37.214794 W -107.854722	Basin Creek River Mile 15 N 37.18606944 W -107.878889
Animas River Segment2 (Basin Creek to confluence with Florida River, excluding the Florida River including Basin Creek, and all perennial streams, small ponds and wetlands tributary to this segment, excluding the Florida River)	COOL1 REC1 PWS AGR	Basin Creek River Mile 15 N 37.18606944 W -107.878889	Florida River River Mile 3.8 N 37.048706 W -107.872933
Animas River Segment3 (Florida River to New Mexico state line and all perennial streams (excluding the Florida River), small ponds and wetlands tributary to this segment)	COOL1 REC1 PWS AGR	Florida River River Mile 3.8 N 37.048706 W -107.872933	Southern Boundary River Mile 0 N 36.999739 W -107.866181

Table 3. Designated Uses for the Florida River, Hydrologically Connected Wetlands and Associated Perennial Tributaries.

Segment and Description	Designated Uses	Segment Boundaries	
Florida River (Reservation boundary to Animas River and all perennial streams, small ponds and wetlands tributary to this segment)	WARM1 REC1 PWS AGR	Northern Boundary River Mile 22.9 N 37.21497222 W -107.72916667	Confluence with Animas River Mile 0 N 37.048706 W -107.872933

Table 4. Designated Uses for the La Plata River, Hydrologically Connected Wetlands and Associated Perennial Tributaries.

Segment and Description	Designated Uses	Segment Boundaries	
La Plata River Segment1 (Northern Reservation boundary to the confluence of Cherry Creek and all perennial streams, small ponds and wetlands tributary to this segment, excluding Cherry Creek)	COOL1 REC2 PWS AGR	Northern Boundary River Mile 21.4 N 37.214814 W -108.061594	Cherry Creek River Mile 9.7 N 37.11562778 W -108.198333
La Plata River Segment2 (Cherry Creek to Long Hollow Creek and all perennial streams, small ponds and wetlands tributary to this segment, excluding Long Hollow and Cherry Creek)	WARM1 REC2 PWS AGR	Cherry Creek River Mile 9.7 N 37.11562778 W -108.198333	Long Hollow Confluence River Mile 4.4 N 37.05325 W -108.182108

La Plata River Segment3 (Long Hollow Creek to southern end of the Reservation, including Long Hollow Creek, and all perennial streams, small ponds and wetlands tributary to this segment)	COOL1 REC2 PWS AGR	Long Hollow Confluence River Mile 4.4 N 37.05325 W -108.182108	Southern Boundary River Mile 0 N 36.999719 W -108.188558

Table 5. Designated Uses for Cherry Creek, Hydrologically Connected Wetlands and Associated Perennial Tributaries.

Segment and Description	Designated Uses	Segment Boundaries	
Cherry Creek (Northern Reservation boundary to the confluence of the La Plata River and all perennial streams, small ponds and wetlands tributary to this segment)	WARM1 REC2 PWS AGR	Northern Boundary River Mile 7.9 N 37.215056 W -108.223667	Confluence with the La Plata River River Mile 10.2 N 37.115661 W -108.198542

Table 6. Designated Uses for the Piedra River, Hydrologically Connected Wetlands and Associated Perennial Tributaries.

Segment Description	Designated Uses	Segment Boundaries	
Piedra River Segment1 (Reservation boundary to confluence with Stollsteimer Creek and all perennial streams, small ponds and wetlands tributary to this segment, excluding Stollsteimer Creek)	COOL1 REC1 PWS AGR	Northern Boundary River Mile 15.8 N 37.214789 W -107.348381	Confluence with Stollsteimer Creek River Mile 5.3 N 37.1388361 W -107.355000
Piedra River Segment2 (Confluence with Stollsteimer Creek to Navajo Reservoir and all perennial streams, small ponds and wetlands tributary to this segment, excluding Stollsteimer Creek)	WARM1 REC1 PWS AGR	Confluence with Stollsteimer Creek River Mile 5.3 N 37.1388361 W -107.355000	High Water Elevation of Navajo Reservoir River Mile 0 N 37.054994 W -107.410683

Table 7. Designated Uses for Sambrito Creek, Hydrologically Connected Wetlands and Associated Perennial Tributaries.

Segment and Description	Designated Uses	Segment Boundaries	
Sambrito Creek (Headwaters to confluence with Navajo Reservoir and all perennial streams, small ponds and wetlands tributary to this segment)	WARM1 REC1 PWS AGR	Headwaters River Mile 12 N 37.139181 W -107.464247	Confluence with Navajo Reservoir River Mile 0 N 37.006569 W -107.457364

Table 8. Designated Uses for Stollsteimer Creek, Hydrologically Connected Wetlands and Associated Perennial Tributaries.

Segment and Description	Designated Uses	Segment Boundaries	
Stollsteimer Creek (Reservation boundary to confluence with Piedra River and all perennial streams, small ponds and wetlands tributary to this segment)	WARM1 REC1 PWS AGR	Reservation Boundary River Mile 14.2 N 37.21484167 W -107.220278	Confluence with Piedra River River Mile 0 N 37.138947 W -107.355278

Table 9. Designated Uses for the San Juan River, Hydrologically Connected Wetlands and Associated Perennial Tributaries.

Segment	Designated Uses	Segment Description and Location	
San Juan River Segment1 (Northern Reservation boundary to Rio Blanco and all perennial streams, small ponds and wetlands tributary to this segment, excluding Rio Blanco)	WARM1 REC1 PWS AGR	Northern Boundary River Mile 36.1 N 37.218325 W -107.018056	Confluence with Rio Blanco River Mile 28.4 N 37.120727 W -107.043497
San Juan River Segment2 Rio Blanco to confluence with Navajo River and all perennial streams, small ponds and wetlands tributary to this segment, excluding Rio Blanco and Navajo River)	WARM1 REC1 PWS AGR	Confluence with Rio Blanco River Mile 28.4 N 37.120727 W -107.043497	Confluence with Navajo River River Mile 15.1 N 37.024364 W -107.158656
San Juan River Segment3 (Confluence with Navajo River to Navajo Reservoir and all perennial streams, small ponds and wetlands tributary to this segment, excluding Navajo River)	WARM1 REC1 PWS AGR	Confluence with Navajo River River Mile 15.1 N 37.024364 W -107.158656	Navajo Reservoir River Mile 0 N 37.019003 W -107.344558

Table 10. Designated Uses for the Navajo River, Hydrologically Connected Wetlands and Associated Perennial Tributaries.

Segment	Designated Uses	Segment Description and Location	
Navajo River (Southern Boundary to confluence with the San Juan River and all perennial streams, small ponds and wetlands tributary to this segment)	WARM1 REC1 PWS AGR	Reservation Boundary River Mile 4.7 N 37.000069 W -107.108752	Confluence with San Juan River River Mile 0 N 37.024364 W -107.158656

Table 11. Designated Uses for the Rio Blanco River, Hydrologically Connected Wetlands.

Segment	Designated Uses	Segment Description and Location	
Rio Blanco River (Southern Boundary to confluence with the San Juan River and all perennial streams, small ponds and wetlands tributary to this segment)	WARM1 REC1 PWS AGR	Reservation Boundary River Mile 3.2 N 37.135 W -107.001	Confluence with San Juan River River Mile 0.0 N 37.120727 W -107.043497

Table 12. Designated Uses for Capote Reservoir and Scotts Pond.

Water body	Designated Uses	Location
Capote Reservoir	WARM1 REC1	N 37.199403 W -107.257744
Scott's Pond	WARM1 REC1	N 37.135747 W -107.623406

Table 13. Designated Uses for Ephemeral Washes.

Segment	Designated Uses	Segment Description and Location
All Ephemeral Washes	WARM1 REC2 AGR PWS	Reservation wide

5.8 Intermittent Waters – This subsection establishes designated uses applied to intermittent Tribal waters whenever surface water is present from any source, however minimal. When surface water is present, intermittent Tribal waters are protected by the designated uses (and criteria) applied to connected downstream perennial waters.

5.9 Tribal Waters Subject to Use Attainability Analyses – This subsection documents the Tribe's list of waters needing UAAs. The Tribe notes that all Tribal waters identified as needing UAAs are listed due to their REC2 use designations (see Tables 5, 6 and 14 in subsection 5.7 above). The Tribal waters listed include:

- La Plata River Segments 1, 2 and 3;
- Cherry Creek; and
- All Ephemeral Washes.

The Tribe developed UAAs for these waters and shared the documents with the public. However, the Tribe subsequently chose to apply REC1 criteria to protect all its REC2 designated waters. EPA guidance provides the option to designate either primary contact recreational uses or secondary contact recreational uses for all waters and, where secondary contact recreation is designated, set protective criteria sufficient to support primary contact recreation.[8] Thus, UAAs are not required for the Tribal waters with REC2 designated uses as long as these waters are protected by REC1 criteria. (See Section 8 Numeric Criteria, 8.4 Secondary Contact Recreation discussion below.) The EPA looks forward to working with the Tribe evaluating the need for, and sufficiency of, any required UAAs if during a future rulemaking opportunity it proposes to set less stringent criteria to protect Tribal waters with REC2 designated uses.

The EPA has reviewed the Tribe's Section 5 Designated Uses establishing use classifications that may be applied to Tribal waters; policies for waterbody segmentation, assigning and changing designated uses, and developing Use Attainability Analyses; and the uses designated to Tribal waters. The EPA finds the Tribe appropriately followed EPA guidance[9] in adopting use designation policies and requirements, and in designating uses for Tribal waters. The EPA has determined the Tribe's Chapter 5 Designated Uses policies, requirements and the uses designated to Tribal waters are consistent with the CWA §§ 101(a)(2) and 303(c) and the requirements at 40

[8] See: Water Quality Standards Handbook, U.S. EPA, EPA-823-B-12-002, 2012. Chapter 2 Designation of Uses, 2.1.3 Recreation, pp. 2-4.
[9] *Ibid*, at Chapter 2 Designation of Uses.

C.F.R. § 131.10. Accordingly, the Tribe's Section 5 Designated Uses policies, requirements and uses designated to Tribal waters in Section 5 Designated Uses, Subsections 5.1 – 5.6, 5.7 – 5.8 Use Designations (except Aquatic Life uses), and 5.9 are approved. The Aquatic Life uses designated to Tribal waters in subsections 5.7 - 5.8 Surface Water Use Designations for Tribal Waters are approved subject to ESA consultation.

Section 6 Narrative Water Quality Criteria

The Tribe's Narrative Water Quality Criteria are established in Section 6. Narrative criteria are elements of water quality standards, expressed as narrative statements, representing a quality of water that supports a particular use. Narrative criteria are general statements that describe desired water quality conditions or goals and require that water quality remains "free from" undesirable conditions. The Tribe establishes a goal that the narrative criteria will enable assessment and protection for water quality pollution where numeric criteria alone are not sufficient. Narrative water quality criteria aid addressing water quality problems that are not fully addressed by numeric criteria or other WQS provisions. They also provide a basis for including whole effluent toxicity (WET) requirements in NPDES permits, and can be used as a basis for other regulatory controls (e.g., WQBELs). The Tribe's narrative criteria apply to all Tribal waters at all times.

6.1 Criteria – This subsection adopts the following narrative water quality criteria for all Tribal waters.

> Surface waters shall be free from substances attributable to human-caused point or nonpoint sources in amounts, concentrations, or combinations which may:
> 1. settle to form deposits beneath the water surface or upon adjoining shorelines that have a deleterious effect on biota or that significantly alter the physical or chemical properties of the water or the bottom sediments;
> 2. form objectionable floating debris, scum, film, grease, oil, or other surface materials, including "floatable material" as defined by the CWA;
> 3. produce color, turbidity, odor, or other conditions in such a degree as to impair photosynthesis, reduce water clarity, or create a nuisance;
> 4. cause eutrophication resulting in the objectionable growth of aquatic vegetation or algae or other impairments from excessive nutrients to the extent that it threatens public health or welfare or impairs present or future beneficial uses.
> 5. impart any undesirable taste to edible aquatic or terrestrial species or to the water;
> 6. cause injury to or are toxic to humans or aquatic or terrestrial animals or plants;
> 7. produce undesirable or nuisance aquatic or terrestrial animals or plants; or
> 8. impair the capability of a water body to support a designated use.

6.2 Implementation – This subsection establishes the Tribe's processes for, and considerations in, implementing the narrative water quality criteria. E.g., the Tribe instructs that Narrative Criteria 6.1(5) and (6) are to be implemented in NPDES permits by incorporating all appropriate numeric criteria and WET limitations. Also, the Tribe instructs consideration of the EPA's standards and advisories published under the Safe Drinking Water Act, on a case-by-case basis, for implementing the narrative criteria for all substances that lack numeric criteria for Potable Water Supply use. (See 9.2 Numeric Criteria for Human Health below.)

The EPA has reviewed the Tribe's Section 6 Narrative Water Quality Criteria, and finds the Tribe appropriately followed EPA guidance[10] in developing these provisions for Tribal waters. The EPA has determined the narrative

[10] See: Water Quality Standards Handbook, U.S. EPA, EPA-823-B-17-001, 2017. Chapter 3 Water Quality Criteria, 3.2.2 Narrative Water Quality Criteria, pp. 5-7.

criteria are based on sound scientific rationale and are consistent with the CWA and the requirements at 40 C.F.R. § 131.11. Accordingly, the Tribe's Section 6 Narrative Water Quality Criteria are approved subject to ESA consultation.

Section 7 Narrative Biological Criteria

The Tribe's Narrative Biological Criteria are established in Section 7. Biological criteria (or biocriteria) are numerical values or narrative expressions that describe the expected biological health and integrity of aquatic communities inhabiting waters with a designated aquatic life use. Resident biota integrate multiple impacts over time and can detect stressors from a variety of causes.[11] These criteria are applicable to all Tribal waters at all times. The Tribe establishes a goal that its biological criteria will ensure the maintenance and protection of the structure and function of aquatic communities.

7.1 Criteria – This subsection establishes the following narrative biological criteria for Tribal waters.

> Surface waters shall be free from substances attributable to human-caused point or nonpoint sources in amounts, concentrations, or combinations which adversely impact the structure or function of all life stages of aquatic or terrestrial communities. This shall include protecting, in addition to aquatic life, all life stages of resident and migratory wildlife that use surface waters for feeding, drinking, habitat, or propagation.

7.2 Implementation – This subsection establishes the Tribe's processes for, and considerations in, implementing the narrative biological criteria. E.g., assessments of biological conditions are to include monitoring of the benthic macroinvertebrates, fish and plant communities with community metrics established from reference sites, as appropriate. The Tribe states the intent that the biological criteria are to be implemented in NPDES permitting (e.g., in considering limits based on pollutant-specific numeric criteria or WET). The Tribe's narrative biological criteria establish the intention and authority to protect water resources based on a direct measure of wildlife and aquatic community health.

The EPA has reviewed the Tribe's Section 7 Narrative Biological Criteria, and finds the Tribe appropriately followed EPA guidance[12] in developing these provisions for Tribal waters. The EPA finds that the Tribe's narrative biological criteria are consistent with the CWA and the requirements at 40 C.F.R. § 131.11. Accordingly, the Tribe's Section 7 Narrative Biological Criteria provisions are approved subject to ESA consultation.

Section 8 Numeric Criteria

The Tribe's numeric criteria adoption process, certain numeric criteria technical considerations, and the numeric criteria are established and explained in Section 8. Numeric water quality criteria are values expressed as levels, concentrations, toxicity units, or other numbers deemed necessary to protect designated uses. The EPA publishes National Recommended Water Quality Criteria recommendations pursuant to CWA § 304(a). These criteria recommendations consist of scientific information regarding concentrations of specific chemicals or levels of

[11] *Ibid*., at Section 3.7 Biological Water Quality Criteria (Biocriteria), pp. 20-21.
[12] *Ibid*.

parameters in water that protect aquatic life and human health. The EPA periodically revises these criteria recommendations to reflect the latest data and advances in criteria science. States and tribes are required to adopt water quality criteria that will protect the designated uses of a waterbody. For waters with multiple use designations, the criteria are to support the most sensitive use. These criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated uses. (40 C.F.R. § 131.11) Unless otherwise noted (see subsection 8.4 below), the Tribe adopted EPA's CWA § 304(a) criteria recommendations protecting Tribal waters.

8.1 Establishing Numeric Criteria – This subsection establishes the numeric water quality criteria for all Tribal waters, and processes and requirements for numeric criteria adoption and revisions, including:

- Table 20 Numeric Criteria for the Protection of Aquatic Life in Surface Water values are adopted for all Tribal waters with an aquatic life use designation as default numeric criteria.
- Table 21[13] Numeric Criteria for the Protection of Human Health in Surface Water values are adopted for all Tribal waters with a water supply use designation as default numeric criteria.
- The Tribe adopts a policy providing authority to adopt ambient-based criteria on a case-by-case basis consistent with its criteria revision and adoption policies.
- The Tribe adopts a policy providing authority to adopt site-specific criteria on a case-by-case basis, and a process and requirements for developing and adopting site-specific criteria.
- The Tribe adopts a policy that any proposals to revise numeric criteria shall be evaluated by the Tribe and may be proposed at the next public rulemaking opportunity. If adopted by Council, all numeric criteria revisions are subject to EPA CWA § 303(c) review and approval.

8.2 Potable and Industrial Water Supply – This subsection establishes that the Table 21 Numeric Criteria for the Protection of Human Health in Surface Water are applicable numeric criteria for all Tribal waters with a water supply (PWS) use designation, implemented with: 1) not more than a lifetime 1 in 1,000,000 cancer risk; and 2) a fish consumption rate of 22 grams/day. The Tribe establishes no specific numeric water quality criteria protecting industrial uses at this time.

8.3 Primary Contact Recreation – This subsection establishes numeric bacteriological and pH criteria protecting primary contact recreation (REC1) for all Tribal waters with a REC1 use designation. The adopted criteria are:

- monthly maximum geometric mean of E. coli bacteria of 126 cfu/100 mL;
- statistical threshold value maximum of 410 cfu/100 mL; and
- pH within the range of 6.5 to 9.0.

8.4 Secondary Contact Recreation – This subsection establishes numeric bacteriological criteria protecting secondary contact recreation (REC2) for all Tribal waters with a REC2 use designation. The adopted criteria are:

- monthly maximum geometric mean of E. coli bacteria of 126 cfu/100 mL; and
- statistical threshold value maximum of 410 cfu/100 mL.

Published EPA guidance regarding water quality criteria for bacteria[14] and the Water Quality Standards

[13] EPA notes there are several typographical errors in the Tribe's WQS identifying Table 21 as Table 25. EPA discussed these with the Division staff, and it is EPA's understanding the Tribe will correct the typographical errors at its next rulemaking opportunity. As there is no Table 25 and the clear intent is to reference Table 21, EPA's action refers to Table 21.
[14] *Recreational Water Quality Criteria*, 2012, U.S. EPA, EPA 820-F-12-058, 2012.

Handbook[15] provide states and tribes several options to meet the CWA § 101(a)(2) recreational use interim goal. One option is to designate either primary contact or secondary contact recreational uses and, where secondary contact recreation is designated, set bacteriological criteria sufficient to support primary contact recreation. The EPA considers a secondary contact recreational use, with criteria sufficient to support primary contact recreation (as was adopted by the Tribe), to be consistent with the CWA § 101(a)(2) goal. Under this option, future revisions to apply less stringent bacteriological criteria for REC2 in specific stream segments would be subject to the Tribal WQS requirements for downgrading uses and criteria, and the requirements at 40 C.F.R. §§ 131.10 and 11. The EPA looks forward to working with the Tribe evaluating the need for, and sufficiency of, any required UAAs or justifications for less stringent criteria if during a future rulemaking opportunity it proposes to adopt less stringent criteria to protect Tribal waters with REC2 designated uses.

8.5 Aquatic Life– This subsection establishes that the acute and chronic numeric aquatic life criteria in Table 15 and Table 20 (see subsection 9.2 Numeric Criteria for Aquatic Life below) apply to all Tribal waters with an aquatic life designated use. States and tribes usually adopt two concentrations for aquatic life pollutants; one that protects against acute effects and one that protects against chronic effects. The Criteria Maximum Concentration (CMC) is the highest ambient concentration of a toxicant or condition to which aquatic organisms may be exposed for a short period without causing an unacceptable effect. The Criteria Continuous Concentration (CCC) is the highest ambient concentration of a toxicant or condition to which aquatic organisms can be continuously exposed without causing an unacceptable effect. The CMC and CCC are often referred to as acute and chronic criteria, respectively. Aquatic Life criteria adopted and applied by Temperature Class under Table 15 are:

Table 15 *Aquatic Life Temperature Designations (Class 1 and 2)*

Temperature Class	Dissolved Oxygen (Min Value)	Max Daily Temp	Maximum Weekly Average Temp	pH	Specific Conductance
Cold Water	6 mg/L	20°C (68°F)*	17°C (63°F)**	6.5 - 9.0	200-1,600 µS/cm
Cool Water	6 mg/L	24°C (75°F)*	21°C (70°F)**	6.5 - 9.0	200-1,600 µS/cm
Warm Water	5 mg/L	30°C (86°F)*	27°C (81°F)**	6.5 - 9.0	200-1,600 µS/cm

* Acute Temperature - Duration: 2 hours. Frequency: not to exceed more than once in 3 years.
** Chronic Temperature – Duration: 7-day mean of multiple, equally spaced, daily temperatures. Frequency: not to exceed more than once in 3 years.

The Reservation waters evidence a wide range of natural specific conductivity from headwater streams in relatively pristine forested locations to larger rivers draining geologic areas with readily weathered rock and soils. The Tribe explains the adoption of a range of specific conductance values is designed to: "prevent excessive increases in dissolved solids that could result in changes in community structure." and will be implemented by comparison to reference conditions.

8.6 Hardness-Dependent Criteria for Metals – This subsection establishes the Tribe's hardness-dependent acute and chronic numeric aquatic life criteria for cadmium, chromium III, lead, nickel, silver, and zinc, for all Tribal waters with an aquatic life designated use. Freshwater aquatic life criteria for certain metals are expressed as a function of hardness (as milligrams of $CaCO_3$/L) because hardness can affect the toxicities of these metals, where increasing hardness generally has the effect of decreasing the toxicity of these metals. The Tribe adopted EPA's recommended CWA § 304(a) equations for calculating hardness-dependent acute and chronic aquatic life criteria

[15] See: Water Quality Standards Handbook, U.S. EPA, EPA-823-B-17-001, 2017. Chapter 3 Water Quality Criteria, 3.4 Recreational Water Quality Criteria, pp. 13-14; and (EPA-823-B-12-002, 2012. Chapter 2,) 2.1.3 Recreation, pp. 2-4.

for theses metals, which are presented in Table 16 in the Tribe's WQS. The CMC and CCC calculated for each of these metals at example hardness levels (25–400) are presented in Table 17. The Tribe adopted a 400 mg $CaCO_3$/L hardness cap when using these equations.

8.7 Ammonia Numerical Criteria for All Segments Designated for Aquatic Use – This subsection establishes the Tribe's acute and chronic numeric aquatic life criteria for ammonia, for all Tribal waters with an aquatic life designated use. The Tribe adopted EPA's recommended CWA § 304(a) equations[16] for calculating temperature- and pH-dependent acute and chronic aquatic life criteria for ammonia. These are presented in Table 18 Equation[s] Used for Numerical Criteria of Total Ammonia Nitrogen ("TAN") in the Tribe's WQS. The acute (CMC) criterion is a maximum 1-hour average, while the chronic (CCC) criterion is a 30-day rolling average. The Tribe adopted the full criteria document by reference, including the alternative equations for calculating ammonia criteria in the presence and absence of Oncorhynchus sp. (rainbow trout).

8.8 Selenium Aquatic Life Criteria for Fresh Waters – This subsection establishes the Tribe's numeric aquatic life criteria for selenium, for all Tribal waters with an aquatic life use designation. The Tribe adopted EPA's recommended CWA § 304(a) fish-tissue criteria, lentic (lake) and lotic (flowing waters) water column criteria, and water column intermittent exposure equation aquatic life criteria for selenium.[17] These are presented in Table 19 Selenium Numerical Criteria in the Tribe's WQS. The Tribe adopted the EPA's selenium criteria document (and associated implementation documents) for directing fish tissue studies and implementation decisions.

The EPA has reviewed the Section 8 Numeric Criteria provisions and finds the Tribe followed EPA guidance in adopting numeric water quality criteria and adopting policies for revising its numeric water quality criteria on a case-by-case basis. The Tribe followed EPA's CWA § 304(a) criteria recommendations in adopting the Section 8 Numeric Criteria protecting human health, potable water supply, recreation, and aquatic life designated uses in Tribal waters. The EPA has determined that the Section 8 numeric criteria and policies adopted by the Tribe are consistent with the requirements of the CWA and the requirement to adopt criteria sufficient to protect designated uses at 40 C.F.R. § 131.11. Accordingly, the Tribe's Section 8 numeric water quality criteria for the protection of human health, potable water supply, and recreation designated uses in Tribal waters are approved. The Tribe's Section 8 numeric water quality criteria for the protection of aquatic life designated uses in Tribal waters are approved subject to ESA consultation.

Section 9 Numeric Criteria Tables

The Tribe adopted the numeric water quality criteria in EPA's National Recommended Water Quality Criteria for the protection of aquatic life and human health (see Section 8 above). The Tribe's numeric water quality criteria tables and clarifying footnotes are presented in Section 9 in Tables 20 and 21.

9.1 Numeric Criteria for Aquatic Life– This subsection provides the Tribe's numeric water quality criteria and clarifying footnotes for all Tribal waters with an aquatic life designated use. All Table 20 aquatic life criteria are expressed as the dissolved fraction of the pollutant unless otherwise noted.

[16] See: Aquatic Life Ambient Water Quality Criteria for Ammonia – Freshwater 2013, U.S. EPA, April 2013. EPA-822-R-13-001, pp. 40-47.
[17] See: 2021 Revision to: Aquatic Life Ambient Water Quality Criterion for Selenium – Freshwater 2016, U.S. EPA, August 2021. EPA-822-R-21-006, pp. 98-102.

Table 20 Numeric Criteria for the Protection of Aquatic Life in Surface Water.

Pollutant	CAS Number	CMC (acute) - µg/L	CCC (chronic) - µg/L
Acrolein	107028	3	3
Aldrin[a]	309002	3.0	-
Alkalinity[b]	-	-	20000
alpha-Endosulfan[a,c]	959988	0.22	0.056
Aluminum[d]	7429905		
Ammonia	7664417	See Table 18	
Arsenic[e,f]	7440382	340	150
beta-Endosulfan[a,c]	33213659	0.22	0.056
Cadmium[f]	7440439	See Table 16	
Carbaryl	63252	2.1	2.1
Chlordane[a]	57749	2.4	0.0043
Chloride	16887006	860000	230000
Chlorine	7782505	19	11
Chlorpyrifos	2921882	0.083	0.041
Chromium (III)[f]	16065831	See Table 16	
Chromium (VI)[f]	18540299	16	11
Copper[g]	7440508		
Cyanide[h]	57125	22	5.2
Demeton	8065483	-	0.1
Diazinon	333415	0.17	0.17
Dieldrin	60571	0.24	0.056[a]
Endrin	72208	0.086	0.036[i]
gamma-BHC (Lindane)	58899	0.95	-
Guthion	86500	-	0.01
Heptachlor[a]	76448	0.52	0.0038
Heptachlor Epoxide[a,j]	1024573	0.52	0.0038
Iron	7439896	-	1000
Lead[f]	7439921	See Table 16	
Malathion	121755	-	0.1
Mercury[f,k]	22967926 or 7439976	1.4	0.77
Methoxychlor	72435	-	0.03
Mirex	2385855	-	0.001
Nickel[f]	7440020	See Table 16	
Nonylphenol	84852153	28	6.6
Oxygen, Dissolved[l]	7782447		
Parathion	56382	0.065	0.013
Pentachlorophenol	87865	19[m]	15[m]
pH	-	-	6.5 – 9
Selenium	7782492	See Table 19	
Silver[a,f]	7440224	See Table 16	
Sulfide-Hydrogen Sulfide	7783064	-	2
Temperature[o]	-	Cold, Cool, and Warm Water Matrix – See	

Pollutant	CAS Number	CMC (acute) - µg/L	CCC (chronic) - µg/L
		Section 8.5	
Toxaphene	8001352	0.73	0.0002
Tributyltin (TBT)	-	0.46	0.072
Zinc[f]	7440666	See Table 16	
4,4'-DDT[a]	50293	1.1	0.001

Aquatic Life Table – Footnotes

a. These criteria are based on the 1980 criteria, which used different Minimum Data Requirements and derivation procedures from the 1985 Guidelines. If evaluation is to be done using an averaging period, the acute criteria values given are not to be exceeded and should be divided by 2 to obtain a value that is more comparable to a CMC derived using the 1985 Guidelines.

b. The CCC of 20mg/L is a minimum value except where alkalinity is naturally lower, in which case the criterion cannot be lower than 25% of the natural level.

c. This value was derived from data for endosulfan and is most appropriately applied to the sum of alpha-endosulfan and beta-endosulfan.

d. Freshwater criteria for aluminum shall be developed using EPA's 2018 Final Aquatic Life Ambient Water Quality Criteria for Aluminum (December 2018, EPA 822-R-18-001).

e. This recommended water quality criterion was derived from data for arsenic (III) but is applied here to total arsenic.

f. Freshwater and saltwater criteria for metals are expressed in terms of the dissolved metal in the water column. See Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria. See Table 1a for conversion factors.

g. Acute (CMC) and chronic (CCC) freshwater copper criteria shall be developed using EPA's 2007 *Aquatic Life Ambient Freshwater Quality Criteria—Copper* (EPA–822–R–07–001), which incorporates use of the copper biotic ligand model (BLM). Where sufficiently representative ambient data for DOC, calcium, magnesium, sodium, potassium, sulfate, chloride, or alkalinity are not available, the Tribe shall use the values from the Draft Technical Support Document: Recommended Estimates for Missing Water Quality Parameters for Application in EPA's Biotic Ligand Model, March 2016, EPA 820-E-15-106, which is hereby incorporated by reference. If taking stream order into account, the Tribe will use Tables 8, 9, and 10 of the document; for estimates irrespective of stream order, the state or tribe will refer to Table 4.

h. These recommended water quality criteria are expressed as µg free cyanide (CN/L).

i. The derivation of the CCC for this pollutant did not consider exposure through the diet, which evidence suggests is important for aquatic life occupying upper trophic levels.

j. This value was derived from data for heptachlor and there was insufficient data to determine relative toxicities of heptachlor and heptachlor epoxide.

k. This recommended water quality criterion was derived from data for inorganic mercury (II), but is applied here to total dissolved mercury. If a substantial portion of the mercury in the water column is methylmercury, this criterion will probably be under protective. In addition, even though inorganic mercury is converted to methylmercury and methylmercury bioaccumulates to a great extent, this criterion does not account for uptake via the food chain because sufficient data were not available when the criterion was derived.

l. For fresh waters, see Quality Criteria for Water, 1986 ("Gold Book").

m. Freshwater aquatic life values for pentachlorophenol are expressed as a function of pH and values displayed in table correspond to a pH of 7.8. $CCC = e^{1.005(pH) - 5.134}$, $CMC = e^{1.005\,(pH) - 4.869}$

n. Criteria duration: the acute criterion is instantaneous, and the chronic criterion is a thirty-day rolling average. Criteria frequency: Not to be exceeded more than once in 3 years.

9.2 Numeric Criteria for Human Health– This subsection provides the Tribe's numeric water quality criteria and clarifying footnotes for all Tribal waters with a water supply designated use. All Table 21 human health criteria are implemented to protect human health from ingesting water + resident organisms, and for ingesting resident organisms only.

Table 14 Numeric Criteria for the Protection of Human Health in Surface Water.

Pollutant	**CAS Number**	**Water + Organism** (µg/L)	**Organism Only** (µg/L)
1,1,1-Trichloroethane [a]	71556	10000	200000
1,1,2,2-Tetrachloroethane	79345	0.2	3
1,1,2-Trichloroethane [a]	79005	0.55	8.9
1,1-Dichloroethylene [a]	75354	300	20000
1,2,4,5-Tetrachlorobenzene	95943	0.03	0.03
1,2,4-Trichlorobenzene [a]	120821	0.071	0.076
1,2-Dichlorobenzene [a]	95501	1000	3000
1,2-Dichloroethane [a]	107062	9.9	650
1,2-Dichloropropane	78875	0.90	31
1,2-Diphenylhydrazine	122667	0.03	0.2
1,2-Trans-Dichloroethylene [a]	156605	100	4000
1,3-Dichlorobenzene	541731	7	10
1,3-Dichloropropene	542756	0.27	12
1,4-Dichlorobenzene [a]	106467	300	900
2,3,7,8-TCDD (Dioxin)	1746016	5.0e-9	5.1e-9
2,4,5-Trichlorophenol [b]	95954	300	600
2,4,6-Trichlorophenol [b]	88062	1.5	2.8
2,4-Dichlorophenol [b]	120832	10	60
2,4-Dimethylphenol [b]	105679	100	3000
2,4-Dinitrophenol	51285	10	300
2,4-Dinitrotoluene	121142	0.049	1.7
2-Chloronaphthalene	91587	800	1000
2-Chlorophenol [b]	95578	30	800
2-Methyl-4,6-Dinitrophenol	534521	2	30
3,3'-Dichlorobenzidine	91941	0.049	0.15
3-Methyl-4-Chlorophenol [b]	59507	500	2000
4,4'-DDD	72548	0.00012	0.00012
4,4'-DDE	72559	0.000018	0.000018
4,4'-DDT	50293	0.000030	0.000030
Acenaphthene [b]	83329	70	90
Acrolein	107028	3	400
Acrylonitrile	107131	0.061	7.0
Aldrin	309002	7.7e-7	7.7e-7
alpha-BHC	319-84-6	0.00036	0.00039

Pollutant	**CAS Number**	**Water + Organism** (µg/L)	**Organism Only** (µg/L)
alpha-Endosulfan	959988	20	30
Anthracene	120127	300	400
Antimony [a,c,d]	7440360	5.6	640
Arsenic	7440382	0.018	0.14
Asbestos [a,c,e]	1332214	7 million fibers/L	--
Barium [a,c,e,f]	7440393	1000	--
Benzene [a]	71432	0.58	16
Benzidine	92875	0.00014	0.011
Benzo(a) Anthracene	56553	0.0012	0.0013
Benzo(a) Pyrene [a]	50328	0.00012	0.00013
Benzo(b) Fluoranthene	205992	0.0012	0.0013
Benzo(k) Fluoranthene	207089	0.012	0.013
beta-BHC (beta-HCH)	319857	0.0080	0.014
beta-Endosulfan	33213659	20	40
Bis(2-Chloro-1-Methylethyl) Ether	108601	200	4000
Bis(2-Chloroethyl) Ether	111444	0.030	2.2
Bis(2-Ethylhexyl) Phthalate [a]	117817	0.32	0.37
Bis(Chlormethyl) Ether	542881	0.00015	0.017
Bromoform [a]	75252	7.0	120
Butylbenzyl Phthalate	85687	0.10	0.10
Carbon Tetrachloride [a]	56235	0.4	5
Chlordane [a]	57749	0.00031	0.00032
Chlorobenzene [a,b]	108907	100	800
Chlorodibromomethane [a]	124481	0.80	21
Chloroform [a]	67663	60	2000
Chlorophenoxy Herbicide (2,4,5-TP) [Silvex] [a]	93721	100	400
Chlorophenoxy Herbicide (2,4-D) [a]	94757	1300	12000
Chrysene [a]	218019	0.12	0.13
Copper [a,b,c,e]	7440508	1300	--
Cyanide [a]	57125	4	400
Di-n-Butyl Phthalate	84-74-2	20	30
Dibenzo(a,h) Anthracene	53703	0.00012	0.00013
Dichlorobromomethane [a]	75274	0.95	27

Pollutant	**CAS Number**	**Water + Organism** (µg/L)	**Organism Only** (µg/L)
Dieldrin	60571	0.0000012	0.0000012
Diethyl Phthalate	84662	600	600
Dimethyl Phthalate	131113	2000	2000
Dinitrophenols	25550587	10	1000
Endosulfan Sulfate	1031078	20	40
Endrin	72208	0.03	0.03
Endrin Aldehyde [a]	7421934	1	1
Ethylbenzene [a]	100414	68	130
Fluoranthene	206440	20	20
Fluorene	86737	50	70
Gamma-BHC (HCH); Lindane [a]	58899	4.2	4.4
Heptachlor [a]	76448	0.0000059	0.0000059
Heptachlor Epoxide [a]	1024573	0.000032	0.000032
Hexachlorobenzene [a]	118741	0.000079	0.000079
Hexachlorobutadiene [a]	87683	0.01	0.01
Hexachlorocyclohexane (HCH) - Technical	608731	0.0066	0.010
Hexachlorocyclopentadiene [a,b]	77474	4	4
Hexachloroethane	67721	0.1	0.1
Indeno(1,2,3-cd) Pyrene	193395	0.0012	0.0013
Isophorone	78591	34	1800
Manganese [b,c,e,g]	7439965	50	100
Methoxychlor [a]	72435	0.02	0.02
Methyl Bromide	74839	100	10000
Methylene Chloride [a]	75092	20	1000
Methylmercury [c,h]	22967926	N/A	0.3 *mg/kg*
N-Nitrosodi-n-Propylamine [c]	621647	0.0050	0.51
N-Nitrosodimethylamine [c]	62-75-9	0.00069	3.0
N-Nitrosodiphenylamine [c]	86306	3.3	6.0
Nickel [c,d]	7440020	610	4600
Nitrates [a,c,e]	14797558	10000	--
Nitrobenzene [b]	98953	10	600
Nitrosamines [c]	70-25-7	0.0008	1.24
Nitrosodibutylamine [c]	924-16-3	0.0063	0.22

Pollutant	CAS Number	Water + Organism (µg/L)	Organism Only (µg/L)
Nitrosodiethylamine [c]	55-18-5	0.0008	1.24
Nitrosopyrrolidine [c]	930-55-2	0.016	34
Pentachlorobenzene	608935	0.1	0.1
Pentachlorophenol (PCP) [a,b]	87865	0.03	0.04
pH [c,e]	-	5-9	--
Phenol [b]	108952	4000	300000
Polychlorinated Biphenyls (PCBs) [a,c,i]	1336-36-3	0.000064	0.000064
Pyrene	129000	20	30
Selenium [a,c]	7782492	170	4200
Solids Dissolved and Salinity [c,e]	-	250000	--
Tetrachloroethylene [a]	127184	10	29
Thallium	7440280	0.24	0.47
Toluene [a]	108883	57	520
Toxaphene [a]	8001352	0.00070	0.00071
Trichloroethylene [a]	79016	0.6	7
Vinyl Chloride [a]	75014	0.022	1.6
Zinc [b,c]	7440666	7400	26000

Footnotes for Numerical Criteria for Human Health:

a. EPA has issued a Maximum Contaminant Level (MCL) for this chemical which may be more stringent. See EPA's National Primary Drinking Water Regulations.

b. The criterion for organoleptic (taste and odor) effects may be more stringent. See National Recommended Water Quality Criteria - Organoleptic Effects.

c. EPA's National Recommended Human Health Water Quality Criteria for this pollutant were not updated in 2015.

d. This criterion was revised to reflect EPA's q1* or RfD as contained in the Integrated Risk Information System (IRIS) as of May 17, 2002. The fish tissue bioconcentration factor (BCF) is from the 1980 Ambient Water Quality Criteria document.

e. Criteria for these pollutants are from the National Recommended Water Quality Criteria - Human Health Criteria Table. They are not calculated based on this table's inputs for fish consumption rate and cancer risk level.

f. This human health criterion is the same as originally published in the Quality Criteria for Water, 1976 ("Red Book") which predates the 1980 methodology and did not utilize the fish ingestion BCF approach. This same criterion value is published in the Quality Criteria for Water, 1986 ("Gold Book").

g. The Human Health for the consumption of Water + Organism criterion for manganese is not based on toxic effects, but rather is intended to minimize objectionable qualities such as laundry stains and objectionable tastes in beverages.

h. This fish tissue residue criterion for methylmercury is based on the total fish consumption rate.

i. This criterion applies to total PCBs (e.g., the sum of all congener or all isomer or homolog or Aroclor analyses).

j. Criteria duration: instantaneous. Criteria frequency: Not to be exceeded.

The EPA has reviewed the Section 9 Numeric Criteria Tables and clarifying footnotes and finds the Tribe followed EPA's CWA § 304(a) criteria recommendations in adopting the Table 20 criteria protecting aquatic life and the Table 21 criteria protecting human health designated uses in Tribal waters. The EPA is taking no action today on the Tribe's Table 20 chronic aquatic life criterion (CCC) for mercury (see below). With that exception, the EPA has determined that the criteria in these Section 9 tables are based on sound scientific rationale and concludes that the Section 9 numeric criteria tables adopted by the Tribe are consistent with the requirements of the CWA and 40 C.F.R. § 131.11. Accordingly, the Tribe's Section 9, Table 21 Numeric Criteria for the Protection of Human Health in Surface Water criteria and footnotes are approved. Except for the chronic mercury criterion, the Tribe's Section 9, Table 20 Numeric Criteria for the Protection of Aquatic Life in Surface Water criteria and footnotes are approved subject to ESA consultation.

Section 10 Water Quality Standards for Wetlands

The Tribe's water quality standards for wetlands are established in Section 10, applicable to all wetland types occurring in or hydrologically connected to Tribal waters (except constructed wetlands). The designated uses, narrative criteria, numeric criteria and antidegradation policies and procedures in hydrologically connected Tribal waters are applied to all wetlands. The Tribe establishes a goal to maintain wetland water quality, functions, and values at naturally occurring levels, within the natural range of variation for individual wetlands. The Tribe adopts narrative wetland water quality criteria to maintain wetland functions and values as follows:

> 1. Storm and flood water storage and retention and the moderation of water level fluctuation extremes;
> 2. Filtration or storage of sediments, nutrients or toxic substances that would otherwise adversely impact the quality of other waters of the Tribe;
> 3. Shoreline protection against erosion through the dissipation of wave energy and water velocity and anchoring of sediments;
> 4. Habitat for aquatic organisms in the food web including, but not limited to, fish, crustaceans, mollusks, insects, annelids, planktonic organisms and the plants and animals upon which these aquatic organisms feed and depend upon for their development in all life stages;
> 5. Habitat for resident and transient wildlife species, including mammals, birds, reptiles and amphibians for breeding, resting, nesting, escape cover, travel corridors and food; and
> 6. Recreational, culturally significant wetland plant species, educational, scientific and natural scenic beauty values and uses.

The EPA finds that the Tribe followed EPA guidance[18] in developing its Section 10 Water Quality Standards for Wetlands; followed a scientifically defensible methodology for identifying the functions and values to be maintained in wetlands; and adopted narrative and numeric criteria and antidegradation policies and procedures adequate to protect wetlands. The EPA has determined the Tribe's Water Quality Standards for Wetlands are consistent with the CWA and the requirements at 40 CFR § 131.11. Accordingly, the Tribe's Section 10 Water Quality Standards for Wetlands are approved subject to ESA consultation.

[18] See: Water Quality Standards Handbook, U.S. EPA, EPA-823-B-17-001, 2017. Chapter 3 Water Quality Criteria, 3.12 Water Quality Criteria for Wetlands, p. 24; and Templates for Developing Wetland Water Quality Standards, at: https://www.epa.gov/wqs-tech/templates-developing-wetland-water-quality-standards.

Section 11 Outstanding Tribal Resource Waters

This section establishes the Tribe's policies for nominating and designating Tribal waters as Outstanding Tribal Resource Waters (OTRWs, or Antidegradation Tier 3 waters), and adopts requirements to protect OTRW water quality. The Tribe's OTRW policy authorizes: 1) any Tribal water may be designated as an OTRW by the Council; 2) OTRW nominations may be submitted by a member of the public or a Tribal member; 3) OTRW nominations and determinations should be made in accordance with the qualifying considerations (e.g., exceptional recreational or ecological significance) provided in this section; and 4) certain OTRW information may be restricted from public access and released only upon request (to protect OTRW resources from overuse or excess visitation). The policies also provide that OTRWs are protected by the waterbody's designated uses, narrative and numeric criteria, and antidegradation policies and procedures. The Tribe also adopts the following Table 22 water quality protections for OTRWs:

Table 22. These water quality requirements apply to all Outstanding Tribal Resource Waters.

Constituent	Standard
Dissolved oxygen	No observable change caused by discharge
pH	No observable change caused by discharge
Temperature	No observable change caused by discharge
Total dissolved solids	No observable change caused by discharge
Total nitrogen	No observable change caused by discharge
Total phosphorus	No observable change caused by discharge
All numerical criteria	No observable change caused by discharge

The policies also state:

> "No observable change caused by discharge" will be implemented through the antidegradation review process and through incorporation into applicable NPDES permits for point source discharges and through required, enforceable BMPs for nonpoint sources.

The OTRW policy also authorizes adopting site-specific WQS to maintain and protect water quality in OTRWs.

The EPA has reviewed the Section 11 Outstanding Tribal Resource Waters policies and requirements. EPA notes that the Tribe has no OTRW designations at this time. The EPA has determined that the OTRW policies and requirements adopted by the Tribe are consistent with the requirements of the CWA and 40 CFR § 131.12. Accordingly, the Tribe's Section 11 Outstanding Tribal Resource Waters provisions are approved.

Section 13 Antidegradation Review Policies and Procedures

This section establishes the Tribe's antidegradation policy and implementation procedures. The basic purpose of an antidegradation program is to promote the maintenance and protection of existing water quality. Antidegradation recognizes that existing water quality has inherent value worthy of protection and instructs a public review to determine whether a lowering of water quality is to be authorized.

13.1 Antidegradation Policy – This subsection establishes the Tribe's antidegradation policy. The antidegradation policy establishes the Tribe's authority to protect existing uses (Tier 1), high quality waters (Tier 2), and Outstanding National Resource Waters (or Outstanding Tribal Resource Waters,[19] OTRWs – Tier 3). The Tribe's antidegradation policy provides a mechanism to evaluate proposed activities (e.g., new or expanded NPDES discharges) and to publicly evaluate, and if necessary, limit lowering of existing water quality. The Tribe's antidegradation policy as detailed in subsection 13.1, applies to all Tribal waters, and follows the three-tiered federal policy at 40 C.F.R. § 131.12.

13.2 Antidegradation Implementation Procedures – This subsection adopts the Tribe's antidegradation implementation procedures (in Appendix A. Antidegradation Implementation Procedures) and antidegradation review worksheet (in Appendix B. Antidegradation Review Worksheet). The Tribe's antidegradation implementation procedures provide detailed review steps, methods and guidance (e.g., on public participation and comment) to be followed in implementing the antidegradation policy. The Tribe's antidegradation requirements are triggered whenever a regulated activity is proposed that may have some effect on existing water quality in Tribal waters. The review process guides how such activities will be reviewed to determine whether the proposed activity should be authorized and/or conditioned. The Antidegradation Review Worksheet (in Appendix B) shows the sequence of questions and issues to be addressed, and the information and details necessary, to initiate conducting an antidegradation review.

The EPA has reviewed the Tribe's antidegradation policy, implementation procedures, and review worksheet and finds that the Tribe closely followed EPA guidance[20] in developing and adopting these provisions. EPA notes that the Tribe has no OTRW designations at this time. The EPA concludes that the Section 13 Antidegradation Review Policies and Procedures, including the Tribe's antidegradation policy, implementation procedures and review worksheet, are consistent with the requirements of the CWA and 40 C.F.R. § 131.12. Accordingly, the Tribe's Section 13 Antidegradation Review Policies and Procedures provisions are approved.

Section 14 Variances from Water Quality Standards

This section establishes the Tribe's WQS variance policies, procedures and requirements. A WQS variance is a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition and plan to reduce pollutant loadings. The Tribe's variance policy adopts the goals: 1) variances will be authorized where uses and criteria are temporarily not attainable but where water quality improvements are possible; 2) ensuring variances are used only where WQS components are documented to be unattainable; and 3) variances will ensure the highest attainable water quality during the term of a variance. The Tribe's variance policy adopts the requirements of 40 C.F.R. § 131.14; requires public participation in a WQS rule revision for a variance; adoption by Council; and EPA review and CWA § 303(c) approval of variances.

14.1 Application – This subsection further guides and clarifies the Tribe's variance adoption process, requirements, and the applicability of variances. All variances to Tribal waters must meet the requirements of the Tribal WQS and 40 C.F.R. § 131.14; and must include an expiration date and any interim requirements. All other WQS provisions not affected by the WQS variance shall remain in effect during the variance. All adopted and approved WQS variances will be incorporated in the Tribal WQS as an appendix.

[19] EPA considers the Tribe's "Outstanding Tribal Resource Water" (OTRW) designation to be equivalent to Outstanding National Resource Waters in EPA guidance and 40 C.F.R. § 131.12(3).
[20] See: Water Quality Standards Handbook, 2012. U.S. EPA 823-B-12-002, Chapter 4 Antidegradation.

14.2 Requirements for a Variance – This subsection establishes requirements for all variances to Tribal WQS:

- Variances must include a technical justification demonstrating WQS are not attainable; must ensure the highest attainable condition; and must be approved by the Tribe and EPA.
- All existing uses must be protected, and the WQS variance justification must rely on one of the seven 40 C.F.R. § 131.14(b)(2)(A) factors.
- Variance justifications must include an analysis of all practicable alternatives, and a plan to implement water quality improvements.
- Variances must include an expiration date ensuring the variance is only as long as necessary to implement the proposed water quality improvements. Upon expiration of a variance underlying WQS requirements are effective.
- Variances must include interim requirements reflecting the highest attainable condition.
- Facilities with NPDES permits that receive a variance must have permits that include limits based on the requirements of the variance, and limits based on the underlying WQS effective at expiration of the variance. All technology-based controls must be required in these permits.
- Variances must be reviewed at least once every three years. Proponents may request a subsequent variance, which will only be granted if: a) a new variance can be justified; b) a new variance request meets all 40 C.F.R. § 131.14 requirements; and c) the proponent documents achieving the highest attainable condition throughout the term of the original variance and reasonable progress.

The EPA has reviewed the Section 14 Variances from Water Quality Standards policies, procedures, and requirements. The EPA finds the Tribe followed EPA guidance and recommendations in developing its WQS variance provisions. The EPA has determined that the Section 14 Variances from Water Quality Standards policies, procedures, and requirements are consistent with the requirements of the CWA and 40 C.F.R. § 131.14. Accordingly, the Tribe's Section 14 Variances from Water Quality Standards provisions are approved.

Provisions Where EPA is Taking No Action

1.3 Severability – This subsection establishes that if any portion of the Tribe's WQS is held invalid, then only that affected portion of the WQS shall be held invalid. EPA has reviewed the subsection 1.3 Severability clause. This provision does not: 1) directly address designated uses, criteria or antidegradation; nor 2) specify the desired condition or level of protection for Tribal waters. The EPA has determined that this provision is not a WQS.[21] Consequently, EPA is taking no action today on the Tribe's Section 1 Purpose, Authority, and Applicability, subsection 1.3 Severability provision.

Section 2 Implementation of Standards – This section includes general policies instructing the implementation of the Tribe's WQS under CWA §§ 401 and 402; includes that the Tribe's WQS should be used as the basis for CWA § 303(d) total maximum daily loads (TMDLs); and subsection 2.2 Water Rights discusses implementation of Tribal WQS with respect to water rights. EPA has reviewed the Section 2 Implementation of Standards provisions and has determined that only the authorization of schedules of compliance and subsection 2.1 Critical Conditions (discussed above) are WQS. The EPA has determined that the other provisions of Section 2 are not

[21] See: What is a New or Revised Water Quality Standards Under CWA 303(c)(3)? Frequently Asked Questions, October 2012. U.S. EPA, 2012. 820-F-12-017, at: https://www.epa.gov/sites/default/files/2014-11/documents/cwa303faq.pdf.

WQS.[22] These provisions do not: 1) directly address designated uses, criteria or antidegradation; nor 2) specify the desired condition or level of protection for Tribal waters. Consequently, except for the authorization of schedules of compliance and 2.1 Critical Conditions, the EPA is taking no action today on the Tribe's Section 2 Implementation of Standards provisions.

Section 9.1 Numeric Criteria for Aquatic Life, Chronic Mercury Criterion – The Tribe adopted EPA's most recent CWA § 304(a) chronic criterion (CCC) recommendation protecting aquatic life from the effects of mercury. New science has demonstrated that aquatic life are more sensitive through a dietary exposure of mercury rather than an aqueous exposure to mercury which is the basis of the current 304(a) criterion. It is EPA's understanding that the Tribe intends to remove or replace the adopted chronic aquatic life criterion for mercury at its next WQS rulemaking opportunity. Accordingly, the EPA is taking no action today on the Tribe's adoption of the chronic aquatic life criterion for mercury.

Section 12 Analytical Methods

This section establishes the Tribe's policy guiding the selection and use of analytical methods for water quality sampling and testing when implementing its WQS for Tribal waters. The policy states:

> All methods of analysis used to measure the water quality of surface waters for purposes of determining compliance with these standards shall be in accordance with procedures prescribed in the current 40 C.F.R. part 136.

The EPA has reviewed the Tribe's Section 12 Analytical Methods general policy. The EPA finds that this section does not: 1) directly address designated uses, criteria or antidegradation; nor 2) specify the desired condition or level of protection for Tribal waters. The EPA has determined that this provision is not a WQS.[23] Consequently, EPA is taking no action today on the Tribe's Section 12 Analytical Methods.

[22] *Ibid*.